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Medical Experts.

INVESTIGATION

OF

INSANITY

BY

JURIES.

Read before the Santa Clara Medical Society,

SEPTEMBER 4, 1877.

By W. S. THORNE, M. D.

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Medical Experts.

Mr. President and Gentlemen of the Santa Clara Medical Society:

In the almost infinite variety of human affairs there are possibly none more complex than those which are involved in adjusting the legal relations of the insane. And, certainly, no duty which the medical man is called to perform so tries his patience or tests his knowledge and his experience as the character of medical witness in Judicial investigations.

The points to which I particularly desire to call your attention to-night are the following, to-wit:

First.—The present uncertain position occupied by medical experts in California Courts.

Second.—The provision in our civil code which enables a person, who has been declared insane before a commission of lunacy, to demand a Judicial investigation before a Jury.

My own limited capacity, Mr. President, and the presence here to-night of older and more ex-

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perienced members of the profession admonish me that my theme is ill-chosen, and whilst I feel that my effort is properly prefaced by an apology, I am likewise impressed with the conviction, that it is my duty and privilege to raise my voice, feeble though it be, against abuses which are alike derogatory to our profession and an injustice to society.

It is a confession no less mortifying than true, that medical experts, in California Courts, have no legal rights, and their testimony elicits neither respectable consideration nor carries with it authoritative weight. I assume these premises to be true, and if there is a medical man within the sound of my voice, whose experience as a legal expert in this State has been more fortunate, I shall unhesitatingly pronounce his case anomalous. Admitting then my hypothesis, let us inquire, if so we may, wherein lie the evils of which we speak and if possible their remedy.

Any person holding a diploma from a reputable school of medicine and engaged in the active practice of his profession, is in law an expert. In this capacity he may be summoned at any moment to testify to questions of fact, hypothetical or theoretical. The questions thus propounded to the medical witness are frequently complex in their nature, involve a wide range of inquiry, and necessitate on his part a just discrimination, extensive knowledge and large experience. Again, medical science is ever varying; it may be likened

to an uncertain stream that shifts its banks—restless and aggressive, the land-marks change, but the river's course is ever onward. Principles like the rocks left in its ancient bed, alone remain to mark its passage and reveal its work; accepted truths of to-day may be *un*truths, to-morrow. Errors have been enunciated by Philosophers, have been sanctified by the Church, and promulgated by Priests, but have finally been overtaken by this same resistless stream of progress, and by it have been swept out of the world. Even so to-day our science is changing its foundation stones. Insanity is but just emerging from a complex labyrinth of metaphysical obscurities, and has taken its place in pathology as a physical disease. Physiological Chemistry has scarcely conned its alphabet, and its unknown literature, pregnant with marvelous truths has yet to unfold its treasures to us. Equally unexplored is the vast field embraced in the ætiology of diseases, the character of morbid germs and their mode of entry into the economy. Organic Chemistry is filling our libraries with its new facts and experiments. The imperative demand therefore of the medical expert is constant study. The exigencies of the position require, in justice to the profession, a thorough acquaintance with all that is old, and an equal familiarity with all that is new. The range of judicial inquiry often embraces the entire field of medical and surgical knowledge, as well as all their collateral branches. No obsolete

theory, no unborn or possible fact is too remote for searching investigation. Hypothetical questions, ingeniously framed, which include complex and unusual possibilities or specious probabilities, invite the attention, and tax the knowledge, the memory and the judgment of the expert.

Again, medical men are frequently summoned as experts by opposing counsel, between whom there is known to exist personal animosities or professional jealousies. The usual result is anticipated by the legal gentlemen. The doctors contradict each other; the lawyers are delighted, the jury puzzled, and the Court is disgusted with medical testimony. An advocate will not infrequently subpœna his medical friends to testify in a given case. Testimony thus elicited is of necessity biased by the personal influence of the attorney and the *ex-parte* statements of facts derived from the same source. The medical witness is thus led by a piece of legal *finesse* to rebut the evidence of the experts on the other side, which he would have unhesitatingly endorsed in the consulting room. The doctor has perhaps satisfied a little ambitious egotism—he has assisted the attorney to win his cause; but he has done so at the sacrifice of personal dignity, professional unity, and the respect of both court and jury. *Biased* expert testimony is a shame and a disgrace to our profession. It is infinitely baser and more ignoble than rank perjury, for perjury is often the child of fear, of hate, of avarice; but what language shall be found ade-

quate to characterize a student of science, enlightened by education and refined by gentle associations, who can so far forget his duty to himself and society as to prostitute his knowledge to so ignoble a purpose? Again, medical men, after graduation, are prone to neglect the systematic reading of new books and journals. Their reading is desultory, and as the increasing demand of professional duties press them for time, they come to rely more and more upon their own experience, with an overweening confidence as to its entire accuracy. Now, no sane man doubts the value of *individual experience.* As well might you deny the value of a single dollar because it is only one. "I have been in practice twenty years," exclaims a neighbor, "and I speak from experience; I am right!" True to the extent of that one experience for twenty years; but suppose twenty other observers, who have systematically recorded their experience for the same length of time—who are at least your equals in the profession and vastly your superiors in their opportunities for observation—should have met with results adverse to your own, would you not pause ere you ventured to assert the accuracy of your knowledge under oath in a public tribunal? The experience of one man, though of incalculable value, is as naught to establish the truth or falsity of a principle; observations must be numerous and widespread, least the inductions therefrom lead to erroneous conclusions. The most successful ovariotomist is he who has never lost a

case, but can it be truly said that he who has had but a single case, and saved it, is the man?

I will here venture the belief that the medical man whose testimony will carry with it the greatest weight, will be he, who, in addition to his own experience, can supplement it by the accumulated experience of many others, whatever be *his* age or however limited *his* experience. An eminent lawyer once remarked in my presence: "You doctors make bad witnesses. When asked by counsel, questions which no man can answer, why don't you confess your inability to do so?" I have often seen a medical witness floundering through an attempted definition of insanity—of mind and its relations to matter. Herbert Spencer begins his chapter on mind by declaring that we do not know, and probably never shall know, anything concerning mind. It is in nowise derogatory, therefore, to our intelligence, to admit the same unwelcome truth.

To recapitulate, then, the causes, as I understand them, of the merited discredit attending expert testimony in medico-judicial inquiries, are: *First*—A diploma and active practice constituting the only legal requirement for that position. *Second*—Inequality of professional acquirements; an inequality, I may remark, resulting from a difference of industrious habits in the later years of professional life. *Third*—Inharmony among professional men. These, I am persuaded, are the proximate causes of the ridicule and contempt with

which medical testimony is at present received in California courts. The remedies for the evil may be briefly stated to consist in: *First*—A united profession, determined to elevate the standard of medical education. *Second*—The formation of local medical societies for the interchange of ideas and harmonious intercourse, and the promotion of mutual improvement in medical and collateral science. *Third*—The establishment in the medical department of the University of California of a Chair of State Medicine for the benefit of those who desire to fit themselves for service in medico-legal investigations.

In concluding this part of my subject, I would venture to enjoin upon the medical witness that he should enter the court room as he would approach the bedside, a calm intelligence, untramelled by fear or prejudice, instigated by no ignoble purpose and inspired only with the desire to elucidate such questions as are propounded for his consideration, in a manner that shall accord with advanced science and the views of the most enlightened of his profession. The ancient injunction, "Thou shall not muzzle the ox that treadeth out the corn," appears to be pretty generally observed towards all kinds of animals, the world over, with the exception of medical experts, who do an amount of public treading at a rate of compensation inferior to that accorded to the time of a first-class shoemaker. With your permission I will relate an example illustrating the truth of this statement.

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A murder has been committed; the defense set up insanity, and a judicial investigation is had, to determine the *mental* condition of the accused; six experts are summoned to assist in the trial; they are detained three days and a half; a bill for expert service is rendered the county, endorsed by the District Judge and the District Attorney, for an amount below the actual loss that each had sustained by absence from his practice, and the munificent sum allowed by the county for three and a half days service is fifteen dollars a piece. The legal obligations on the part of the expert to respond to the summons of the court is inexorable; but there is no corresponding obligation of the county to remunerate the expert beyond common witness fees of two dollars per diem. It would seem that the five dollars allowed in the case under consideration was a mere gratuity; and counsel on careful investigation have advised the experts that they can not recover the full amount of their claims.

Such, gentlemen, is the anomolous position of medical witnesses before the courts. Now, Mr. President, a physician's time is practically his capital, his stock in trade, if you please. Is not, therefore, this exercise of judicial authority, in effect, the appropriation of private property to public uses without just compensation?

If the courts of this county have the right to compel my attendance, as an expert, three days and a half at the rate of four dollars and twenty-eight cents per diem, it wonld have an equal right

to extend that attendance to fifty days, or a year, at the rate of $1,562.20. Now if my income be $1,000 per month, the county of Santa Clara has the legal right to appropriate to public uses $10,-438.60 of my money, my only redress being to supplicate the Legislature to restore, as a charity, what is mine by right.

The principle by which medical experts are forced to attend in courts of law is manifestly *unjust*, and demands immediate alteration by our next Legislature. The forced attendance of medical experts in courts of justice at a rate of compensation arbitrarily fixed, or withheld, is an abuse of power that finds no excuse in justice or necessity.

The citizen is thus virtually deprived of an inalienable right, for the security of which our forefathers yielded up their fortunes and their lives. Let the medical profession of the State of California see to it that the next Legislature pass an act empowering District Judges to allow extra compensation to medical experts summoned in criminal cases. The same provision can be made for the compensation of medical experts by the Legislature as provided in Section 271 of the Civil Code for the payment of short-hand reporters in criminal cases, which is as follows, to-wit: "In criminal cases, where the testimony has been taken down upon the order of the court, the compensation of the reporter must be fixed by the court, and paid out of the treasury of the county

in which the case is tried, upon the order of the court."

I now pass to the second part of my subject, relating to the trial of persons accused of insanity. Section 1763 of the "Code of Civil Procedure" of the State of California declares that "a person of unsound mind may be placed in an asylum for such persons, upon the order of the County Judge of the county in which he resides, as follows: First—The Judge must be satisfied by the oath of two respectable physicians that such person is of unsound mind, and unfit to be at large. Second—Before granting the order the Judge must examine the person himself, or if that be impracticable, cause him to be examined by an impartial person. Third—After the order is granted, the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree may demand an investigation before a jury, which must be conducted in all respects as under an inquisition of lunacy." Section 1766 declares "That any person who has been declared insane, or the guardian, or any relative of such person, within the third degree, or any friend, may apply by petition to the Probate Judge of the county in which he was declared insane, to have the fact of his restoration to capacity judicially determined. The petition shall be verified, and shall state such person is then sane. Upon receiving the petition the Judge must appoint a day for hearing, and, if the petitioner request it, shall order an investiga-

tion before a jury, which shall be summoned and impaneled in the same manner as juries are summoned and impaneled in other cases in the Probate Court. On trial the guardian or relative of the petitioner, and, in the discretion of the Judge, any other person may contest the right of the petitioner to the relief demanded. If it be found that the petitioner be of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person be not a minor, shall cease." Such, Mr. President, are the latest enactments in this State respecting the examination and trial of persons alleged to be insane. The provisions to which I desire to direct your attention are those parts of Sections 1763 and 1766, which enable the person who has been adjudged insane, or any person within the discretion of the court, the husband or wife, the guardian, or any relative to the third degree, to petition the Probate Judge to order an investigation by a jury. Sir, I will premise my remarks on these provisions of our Civil Code by the enunciation of the following theorem: That if the provisions of our Code, relative to trial by jury of persons alleged to be insane, were hereafter to be applied in all cases, there would be no more commitments to our insane asylums in future, except raving maniacs, and the present inmates of those institutions, once restored to liberty, could never again be returned to them. Let us see if

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the facts will prove the theorem. About the year 1873, one A. B., an intemperate and wealthy citizen of this county, was thought to be insane, and a guardian was appointed to take charge of his estate.

At the solicitation of friends he was placed as a pay patient in St. Mary's Hospital, in San Francisco. He remained there several months. When it became impracticable to retain him longer in that institution he was brought to San Jose. Not long after this event he was examined before a commission of lunacy, consisting of the County Judge and two physicians. He was pronounced insane by this commission and was ordered to be taken to the asylum at Stockton. At the suggestion of his wife he was released after a few weeks confinement in that Institution, but was not discharged as cured. He returned to his home, and soon after made application to the Probate Judge for the discharge of the guardian upon the ground that he was competent to manage his own affairs. A lengthy trial was had and a large number of medical witnesses were called, who testified that the Plaintiff was insane. The application to remove the guardian was denied. A few days subseqent to this event the new law, (Section 1766, Civil Code,) went into effect which allows a person who has been adjudged insane to have his restoration to sanity determined by a jury. A jury was impaneled and by consent of all parties a (sham) verdict was rendered declar-

ing him sane. About this time he made a deed of one-half of his property to his wife, in trust Soon after this instrument was made, his conduct became so ungovernable, and as his family alleged, dangerous, that they made application to the County Judge to have him examined with a view of committing him to an Asylum. The examination was had before the County Judge and two Physicians, sitting as a court. The trial was lengthy and occupyed several days. A large number of medical and lay witnesses were examined, and the result of the inquiry was a declaration of insanity, and the order that the accused be taken to Stockton. A short time before this trial took place, this gentleman made and executed a second deed of one-half of the remaining property, to his wife. Immediately after he had been declared insane by the last commission, and before he was taken to Stockton, a jury was demanded to determine the fact of his restoration to sanity. This trial was contested by the family, and a large number of medical witnesses were called,including his family physician and the Superintendent of the Asylum at Stockton. The testimony of the medical witnesses was unanimously in favor of his insanity. Numerous witnesses, among the laity, however, were not wanting whose opinions flatly contradicted those of learned gentlemen, and the jury returned a verdict of sanity. A few months subsequent to the latter decision, this unfortunate gentleman began an action in the

District Court to have the second deed to his wife set aside, upon the ground that he was insane at the time of executing it. The judgment of the court was, that the deed be set aside upon the grounds as alleged in the complaint. Mr. President, we behold the transformation of the caterpillar into the butterfly and we marvel at the mysterious process of designing nature; but what a sluggard is nature when compared to the law! The law can metamorphose a human intellect from health to frenzy and from frenzy to health by the exercise of its resistless fiat. We read of the Arabian Knights and of Aladdin's Lamp, but the fantastic evolutions of this legal romance surpass them all. The same individual in the short space of two years, without apparent change in his mental state, so far as could be determined by physicians or friends, is thrice pronounced insane by as many commissions of lunacy, twice sane by two different juries and once insane by a District Judge, in order to annul a deed that was executed just prior to the verdict of a jury that declared him sane and therefore responsible for his acts.

From the fantastic inconsistency of the foregoing decisions, a disinterested person might be led to infer, that of all the *dramatis personæ* of this legal farce, the chief actor is the least liable to the imputation of insanity. It is instructive to remark that the learned judges who presided, had all, either separately, or in connection with a commis-

sion of lunacy, pronounced in favor of insanity—an opinion which was fully concurred in by medical men. But the efforts of learned and eloquent counsel, aided by public prejudice, mawkish sentiment, and the ignoring by the jury of all the expert testimony, determined the verdict as stated. I will not weary you with further details respecting jury verdicts in questions of mental capacity. They are so thoroughly farcical, that our judges do not hesitate to advise the friends to drop all proceedings when a jury is demanded. I will illustrate the statement by a few examples. It had long been apparent to the friends of D. V. that his mind was unsound. Some time since he became violent, loquacious, and obscenely *erotic*. He declared he was in frequent correspondence with the Emperor of Germany and his First Chancellor; that he owned large and valuable properties in this city, in which it was known that he had not the remotest interest; that he was the most extraordinary intellect the world had ever produced; that he represented in his own person, several different individuals, and other like absurdities. He was finally arrested for indecent exposure of person and taken to the County Jail. Whilst confined in this place, his wild incoherence and absurd statements convinced the most inexperienced observers that he was laboring under marked aberration of mind. A commission of lunacy was finally ordered, and the expediency of placing him in an asylum was unanimously determined. The patient disagreed

with this decision, and demanded an examination before a jury. A jury was not impaneled; the necessity was kindly obviated by a friend of the accused, a lumber dealer, who gratuitously informed the Judge that the man was not insane, because, forsooth, he could play a better game at cards than himself. It was not deemed necessary to further invoke the popular wisdom in this case, and the man was discharged. Ten years ago J. T., a wholesale merchant, was attacked with a nervous disorder which his physicians pronounced *spinal sclerosis*. Epileptic seizures came on subsequently. His mental powers became manifestly impaired, and he was ordered to the country. He became a patient of mine, and I attended him for several years. He would have attacks of a week's duration, during which he would never sleep. These attacks were accompanied by frequent epileptic fits and *clonic* convulsion of certain muscles. The condition of his mind at such times was wild in the extreme. He finally became violent towards his family, and unmanageable. His condition was generally that of exaltation. He was usually happy; always gaining victories over his enemies, of whom he had no lack. Although poor, he would talk of investments in real estate, and foreign travel. He would rise at midnight and order his attendant to take down the pictures from the walls; insisted that his wife was tired of him and conspired with others to poison him; call

for his meals to be served in the street, and would discharge his servant for imaginary insults or neglect. His general conversation was always childish and often incoherent. His faithful wife long struggled in her misfortune. At last, wan and pale, this feeble woman, bleached with the vigil of ten long years, sought relief from the burden she could no longer bear, at the hands of the law. When, at at last, he threatened her with violence, and spurned her, this wife, all trembling, and with many tears, prayed that, in charity to both herself and him, this husband should be placed in an asylum, and a commission was ordered to inquire into his mental state. During the examination he was assisted by counsel. The medical witnesses thought him insane, and the two physicians did sign, or were willing to sign, the commitment. The judge did not make the order, for it was stated that if made, a jury would be demanded. The wife had no means to defray such expenses, with the certainty of final defeat. The man was discharged. Section 1766 of the Civil Code was again an economy to the State. The law had thrust a madman back upon that hearthstone, where death was soon to lay its unwelcome tribute, and where the lament of a widow would soon mingle with the wail of her posthumous babe. Mr. President, these are facts. To some of you they are known. The man I speak of is a dangerous lunatic, with whom neither you nor I would sleep beneath the same roof. The law said to that poor wife, you

shall take this madman back to your hearth, or I will place you on the witness-stand; I will impugn your motives; I will insinuate a diabolical conspiracy; I will hint at poison; I will wring drops of agony from your pale brow; I will invade the sacred precincts of your domestic temple with court and jury; I will place your demented husband upon the witness-stand, that he may publicly accuse you, under the solemnity of an oath, of conspiracy, of infidelity, of debauchery, and the poisoned draught. All this will I do, in order that the legal fraternity may thrive; that justice may be defeated, and that the absurd and idiotic provisions of that crazy code, number 1766, may be fulfilled.

It is needless to multiply examples of this character. A skillful advocate, before a jury, can set at liberty the most dangerous lunatic in the State. Why is this? Why should not a jury composed of twelve impartial citizens, sworn to render a verdict in accordance with the evidence adduced before them, with medical experts to give opinions and testify as to matters of fact, with a learned judge to expound the law—why, I would ask, should not a court so constituted, present the very best and most perfect type of a tribunal to investigate those complex questions which arise concerning insanity? Learned jurists have said, and still assert, that any person, of common sense and common experience, is as competent to judge between a sound mind and a mind diseased as the

physician or alienist. Sir, this doctrine is repugnant to reason and common sense. As well might they claim that the same persons could as unerringly discriminate between health and disease in some other part of the nervous system—in the retina, the spinal cord, or the medulla-oblongata. The doctrine is utterly false, false in theory and false in fact. If any person, indifferently selected, is as competent as the medical man to judge of what symptoms indicate a diseased brain or nervous system, the same individual, under like circumstances, should be able to determine the symptoms of cholera, scarlatina, measles, or the symptoms of certain poisons. If the assumption of legal gentlemen be true, I would propose that in certain cases of doubtful diagnosis, a jury be empaneled to determine the real character of the disease. I deny the fact that jurymen selected from the laity are competent judges of the symptoms that indicate mental diseases. They are disqualified because: First—They lack the special study and experience by which alone they could comprehend and rightly interpret what they must see and hear. Second—*Juries do not render verdicts in accordance with the evidence.* It is, I believe, one of the esteemed privileges of juries to render verdicts utterly at variance with the testimony. Third—In trials of this character, juries are exposed to the eloquent wiles of counsel, who dwell with telling effect upon the probable persecution of the defendant; the loss of name and repu-

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tation an asylum would entail upon him; conspiracy of family or others from criminal motives, and the hardship of isolation and confinement; finally, the introduction of a mass of testimony by interrogations somewhat as follows:

Question—Do you know the defendant?

Q.—How long have you known him?

Q.—Did you always consider him a sane man?

Q.—Have you often seen and talked with him of late?

Q.—Do you perceive any difference in his mental condition now and when you first knew him?

Q. Do you consider him insane at the present time? The answers to such questions, generally in favor of the defendant, will outweigh the opinion of the mightiest expert in the land, in the opinion of the jury. Yet the witness is not even asked if he has ever seen a case of insanity, if he were ever in an asylum, or whether he has any practical or theoretical knowledge of insanity or insane men. His recent relations with the accused may have been confined to mere daily salutations, or so cursory as to furnish no useful information as to mental health. The position of the accused also, is one that naturally excites in the minds of the jury the deepest sympathy. They can not, and will not, understand why a poor fellow who sleeps little, talks strangely, and facetiously styles himself General Jackson, should be sent away to an asylum, deprived of all that makes life dear to them. They do not believe the man insane; their

sympathies forbid so hard a verdict. Insanity is not a contract, a will or a deed. It is not a question of law; it is a question of fact. A fact often difficult to reach; a fact so closely related with physiological and metaphysical facts, so interwoven with the subtile threads of human intelligence, so artful in alluding apprehension, so dangerous in its results, that its judicial investigation can never be safely entrusted to those deficient in knowledge and experience. The custom of conducting these inquiries before juries, and in public places, should be discontinued. The exhibition of these God-stricken people and their mental deformities as a public spectacle, is a relic of barbarian inhumanity. Charity would fain cover them with the mantel of privacy. The practice of allowing loquacious attorneys to harangue the court, to brow-beat the medical witness and vex him with impertinence, to sneer at and gibe an expert whilst he elucidates some difficult point to a stupid jury, that has been raised by a yet more stupid attorney, is too despicable for respectful comment. What would you think of the proposition, Mr. President, to employ attorneys at law in a court composed of mathematicians? The question for investigation being one pertaining to their science. The very questionable utility of attorneys at law, under any circumstances, would not be found available in such a court. Neither ought they to find place in a court convened

for the solution of a problem quite as technical and far more abstruse. A question of physical disease involving nerve centers. I will here venture the opinion that the day is not far distant, when investigations involving insanity only, will be more expeditiously and justly determined without the assistance of either lawyers or juries. Lawyers tell us sir, that the merchant, the artisan, the laborer and the men who till the soil are as competent and intelligent judges of mental phenomena as the physician.

Let us examine, therefore, a few of the possible advantages which a medical man might possess over the laity in these investigations. The life study of the physician is man; man in his entirety, man as an animal, man as a rational entity, man in relation to himself, and man in relation to his physical surroundings—air, earth, water, organic and inorganic nature. As physicians we behold man in embryo; we often hold in the palm of our hands the germ that had been quickened into a living soul. We subject it to optical glasses and study its physical mysteries. We watch it at every period of its intra-uterine life. We bring it ripe for a more exalted stage of activity into this breathing world. We study its growth and mark its development. We foster and protect it, until we behold the structure complete—a living man. We observe this being in health, and we minister to him in disease. We look into his eyes, that we may read the temper and pressure of his brain.

We scan the optic discs, that we may measure the blood currents and detect unhealthful changes in the sensorium itself. We regard the face and note the emotions that sweep over it. We read upon its pallid surface the signs of agony, peace, fear, love, hope, despair, death. We read a history in the drooping of a lid, the compressed lip, the pinched nostril, or the tremor of a muscle. We feel the heart throb; we interrogate its action, we interpret its sounds. We place our ears upon the chest and tell you of life's breathing tide. We ask the blood its heat, and it records the answer. We bid the stomach, liver, kidneys, to bear us witness, and they respond at our bidding. As we behold the growth of mind with the body, so do we witness their decay. We study psychology in its various relations to physical disease. We see it infinitely manifested as physical decay encroaches upon its citadel. We study mental phenomena as the earliest precursor of physical death. We observe, study and interpret, mental phenomena as a most important aid to phyical diagnosis. We begin this study in our student days, and we never cease this careful observation of mental phenomena. It yields to the medical man a full measure of practical benefits in the treatment of human maladies. The physician's life, then, is chiefly devoted to the special study of phyiscal disease and mental manifestations in relation thereto. Will the jurist, yet assert that the man whose life is spent in the manufacture of shoes, the produc-

tion of wheat, and the growth of four-footed beasts, is as competent to estimate the value and interpret the symptoms of diseased nerve centres as he, whose life has been spent in their special study? This assertion of legal gentlemen is too absurd for argument. I will remark, by way of a possible explanation for this curious belief, that the most learned alienists of this age declare that in general, the lawyers and jurists are as ignorant of insanity as the laity itself. This statement accords with my own experience.

The special study which they direct to the investigation of a particular case, in which they are acting as partisans, tends neither to enlarge their views nor enlighten their understanding upon the subject. It certainly would do so, if they could persue the investigation with that careful and impartial spirit of inquiry that alone leads to knowledge. Erroneous tests of insanity have been incorporated into works of law, and these dogmas have become a part of the judicial mind. Practically ignorant of nervous disorders and the physiological knowledge necessary to comprehend them, and unused to contact with the insane, what wonder is it that the judicial ideas of insanity are as crude as the antiquated law which inspired them. The study of the mind is the study of the human body. He who declares that mind is a function of the brain alone, asserts an untenable theory. Every organ in the body ministers directly or indirectly to the manifestations of mind. *Mens sana in cor-*

pore sano is an axiom. Every organ in the body is connected by direct continuity of nervous structure with the brain. The mind, as a separate entity, exists only in the imaginations of men. It can only be studied in relation to its corelative matter, the body. He who most perfectly comprehends the latter must, of necessity, learn much of the former; and it is the special province of the physician to study both. As he is the custodian of the diseased body, so, likewise, is he the ablest minister to the mind diseased. Physicians should be both judges and jury in questions involving mental derangement. Our present Commission of Lunacy is a sufficient guarantee of honest, intelligent and just decision. If any particular doubts arise, more experts can be summoned; and should there still be doubts, it is ever safe and practicable to delay proceedings whilst the accused is kept under observation.

The provisions of sections 1763 and 1766 of our civil code, respecting the examination of persons alleged to be insane, before juries and assisted by counsel, should be repealed. Such an act would meet the approval of every legal gentleman and jurist whose opinion I have been able to obtain at this time. In common justice to medical men, whose time and knowledge are so indispensable in medico-judicial investigations, a provision should be made for their extra compensation, similar to that in section 271 respecting short-hand reporters

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in criminal cases. Thanking you, Mr. President and gentlemen, for your respectful attention, I will close, with the hope that the profession of the State will lend its generous efforts to correct our present system of expert service, and the trial by jury of person held to be insane.

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